U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-H-K-

DATE: OCT. 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software and system developer, seeks classification as an individual of exceptional ability. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is attached to this immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. The Director found that the Petitioner qualified for classification as an individual of exceptional ability, but that he had not established that a waiver of a job offer would be in the national interest.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he satisfies the national interest waiver requirements. The Petitioner mentions his patents, published work, awards, and high salary.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

> who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> > (i) National interest waiver. . . . the Attorney General[1] may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Department of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of demonstrable achievement with some degree of influence on the field as a whole. *Id.* at 219, n.6. In evaluating a petitioner's achievements, original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

The Director determined that the Petitioner qualified as an individual of exceptional ability. The sole issue in contention is whether the Petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest according to the three-pronged analytical framework set forth in *NYSDOT*.

The Petitioner is the founder and chief executive officer of a Korean company that develops video monitoring and closed-circuit television (CCTV) technologies. Furthermore, at the Petitioner served as a consultant for the electronic engineering program and as an adjunct professor in the department of computer engineering. The Petitioner states: "I intend to continue to work as a software and system specialist for monitoring system and CCTV in the United States of America, where my work will focus on designing and applying innovative monitoring system that will have a significant impact on the safety of people in the United States of America."

The Director found that the Petitioner's work to develop monitoring system technologies has substantial intrinsic merit and that the benefits of such work are national in scope. It remains, then, to determine whether the Petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The Director concluded that the Petitioner's impact and influence on his field did not satisfy the third prong of the *NYSDOT* national interest analysis.

The record includes documentation of the Petitioner's published work, Korean patents, memberships, income, awards, magazine interviews, and academic credentials. In addition, the Petitioner submitted three reference letters discussing his work in the field. For example, he provided a letter from chairman of the board for the a trade group of approximately 400 small and medium size businesses in which the Petitioner's company is registered. indicated that the Petitioner is "an auditor of the Cooperative" and that he has been running "for more than 15 years." With respect to the Petitioner's work for stated that he "has made notable contributions to the development of monitoring equipment in Korea" and that his company "has produced high quality products related to video security," but did not identify any of the new technological contributions or video security products. While noted that a brand under which the cooperative produces and supplies products to its registered companies, selected one of products, he did not identify the product or explain how the Petitioner's innovation has influenced the field. also contended that the Petitioner and his company "have been conducting many important research projects launched by the government and making significant contributions to the development of new technologies," but did not offer any specific examples of how his research findings and technological developments have advanced the industry or have otherwise affected the field as a whole.

a professor in the department of engineering at stated that he and the Petitioner "have been conducting many notable government projects together," but did not offer any further explanation regarding their government project collaborations. Although claimed that their "research results and technologies developed through the projects are applied extensively in related business areas and products with the new technologies are being sold worldwide," he did not provide specific examples of their application in the industry or any sales information for the products.

managing partner of described the Petitioner as an important client who has filed "many significant patents in his business area." indicated that the Petitioner's "inventions are so innovative and critical that they have been making [a] huge impact on monitoring system technology in Korea." In addition, maintained that the Petitioner's patents entitled "Intelligence CCTV system for preventing crime and crime prevent system and method using the same" and "Monitoring system using smart phone" are "notable patents" that have "exerted a significant influence on preventing crime with monitoring system." Furthermore, stated that the Petitioner's patent, entitled is an invention that demonstrates his "ability to apply monitoring system technology to other business areas in a very innovative way."

The Petitioner submitted copies of his patent certificates from the but there is no supporting evidence to corroborate claims regarding the impact of the Petitioner's inventions. While issuance of a patent recognizes the originality of an idea, it does not demonstrate that the Petitioner has influenced the field through his development of the invention. A patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See NYSDOT*, 22 I&N Dec. at 221, n. 7. Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* Although the Petitioner's patented innovations were utilized in his company's products, there is no documentary evidence supporting statements that they have demonstrably impacted the field. *See Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field); s*ee also Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The Petitioner has not shown that his inventions have affected the monitoring system industry or that his work has otherwise influenced the field as a whole.

and both mentioned the Petitioner's authorship of a book entitled but they did not explain how the publication has affected the field. In addition to evidence of his book, the Petitioner submitted a research article he authored, entitled With regard to the Petitioner's published work, a substantial number of favorable independent citations for an article or book is an indicator that other researchers are familiar with the work and have been influenced by it. A lack of citations, on

the other hand, is generally not suggestive of the work's impact in the field. In this case, there is no evidence demonstrating that the Petitioner's publications have garnered a significant number of independent citations or that his work has otherwise affected the field as a whole.

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). As the submitted reference letters did not establish that the Petitioner's work has influenced the field as a whole, they do not demonstrate his eligibility for the national interest waiver.

The Petitioner's evidence included documentation pertaining to his exceptional ability in the field. For example, the Petitioner provided his university degrees and transcripts, a certificate of income, professional memberships, and various awards that he and his company received. Academic records, salary information, membership in professional associations, and recognition for achievements are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii)(A), (D), (E), and (F) respectively. However, in this matter, the Petitioner must also demonstrate eligibility for the additional benefit of the national interest waiver.

We note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. Pursuant to section 203(b)(2)(A) of the Act, individuals of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. *NYSDOT*, 22 I&N Dec. at 218, 222. Therefore, whether a given individual seeks classification as an individual of exceptional ability or as a member of the professions holding an advanced degree, that individual cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his field of expertise. The national interest waiver is an additional benefit, separate from the classification sought, and therefore eligibility for the underlying classification does not demonstrate eligibility for the additional benefit of the waiver. Without evidence showing that the Petitioner's work has influenced the field as a whole, we cannot conclude that he has demonstrated eligibility for the national interest waiver. *See id.* at 219, n. 6.

For instance, with regard to the award certificates presented to the Petitioner and his company, there is no evidence showing that they were recognized beyond the presenting institutions and indicative of influence on the field as a whole. Furthermore, the English language translations of the awards were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). On appeal, the Petitioner mentions a 2007 award certificate from the given to and The certificate stated: "This award shall be presented to the above institutes in recognition of their outstanding achievement in proliferation of family corporations and contribution to development of local business by

enthusiastically participating Industry / Company programs introduced by the government." Based on the preceding statement, there is no indication that the aforementioned award is a reflection of the Petitioner's influence in the monitoring system industry.

With regard to the magazine interviews offered by the Petitioner, they were unaccompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without proper English language translations and information showing the circulation of the magazines, we cannot conclude that the submitted media coverage demonstrated the Petitioner's impact on the field.

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. Although a petitioner need not demonstrate notoriety on the scale of national acclaim, he must have "a past history of demonstrable achievement with some degree of influence on the field as a whole." *NYSDOT*, 22 I&N Dec. at 219, n.6. In this matter, the Petitioner has not established by a preponderance of the evidence that he has a past record of demonstrable achievement with some degree of influence on the field as a whole or that he will otherwise serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

III. CONCLUSION

Considering the evidence in the aggregate, the Petitioner has not demonstrated that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, he has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of K-H-K-*, ID# 12643 (AAO Oct. 25, 2016)